



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Bunsch

**Respondent:** Woodland Commercial Limited

**Heard at:** London South (in private by CVP) **On:** 28 August 2024

**Before:** Employment Judge Heath

## Appearances

For the claimant: In person (with Mr Okeydu McKenzie friend)

For the respondent: Ms H Suleman (Solicitor)

**JUDGMENT** having been sent to the parties on **30 August 2024** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. These are reasons requested following an oral decision I gave at a Public Preliminary Hearing on 28 August 2024 in which I refused to strike out the claimant's claim. I made further case management orders sent to the parties in a Record of a Preliminary Hearing. A period of annual leave and other commitments have meant that these Reasons have taken longer to send out than I would have liked, and I apologise for the delay.

## The application and procedure

2. The respondent made an application to strike out the claimant's claim in writing dated 18 July 2024. The basis of the application, in short, was that the conduct of the proceedings by the claimant was vexatious, scandalous, and unreasonable. It was alleged that the claimant had approached two contractors, who were working for the respondent, and offered them £1000 each to give evidence of a damaging nature against the respondent. The respondent further asserted that it was no longer to have a fair hearing of this matter because, it says, the claimant had submitted a DBS certificate which it asserts have been tampered with.
3. There had been an open preliminary hearing before Employment Judge Aspinall on 13 June 2024 at which the judge did not strike out the claim

based on a different application to strike out. He listed a hearing on 28 August 2024 in order to review the status of the claims. As set out above, the respondent made an application to strike out based on bribery and document tempering. On 30 July 2024 Employment Judge Aspinall directed that this hearing should also consider this matter.

4. The respondent provided a 104 page bundle, and Mr Brennan, a Subcontract Site Manager for the respondent at the relevant time, provided a one-page witness statement in support of the application. The claimant sent to the tribunal a large number of emails and various documents headed "witness statement". He indicated that there was a witness statement from a Mr Yarema, who he wished to give evidence, and he wished to call a Mr Hay. I found an email from January 2024 from Mr Yarema, which the claimant confirmed was the witness statement.
5. Mr Brennan gave evidence at the hearing as did the claimant, Mr Yarema and Mr Hay.
6. I gave an oral decision on the application, as set out above.

## **The law**

7. Rule 37 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 Sch 1 ("ET Rules") provides: -

*(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*

*(a) ...*

*(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*

*(c) ...*

*(d) ...*

*(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).*

*(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*

8. Various authorities, including *Bolch v Chipman* [2004] IRLR 140 have held that on an application for strike out brought under r. 37(1)(b) it is necessary for the tribunal to establish: -

- a. That the conduct complained of was scandalous, unreasonable or vexatious;

- b. That the result of the conduct was that there could not be a fair trial;
  - c. That the imposition of the strike out was proportionate, and that a lesser sanction was not appropriate and consistent with a fair trial;
  - d. If the claim or response is struck out, what further consequences might follow, for example, should the party be debarred from participating at the liability stage only.
9. In *Bolch* it was further held that, save in exceptional circumstances, there must be a conclusion that a fair trial is not possible, and that that striking out is not regarded simply as a punishment for the scandalous, unreasonable or vexatious conduct of proceedings.
10. Scandalous, unreasonable or vexatious conduct carries a notion of an abuse of the tribunal's process (*Bennett v London Borough of Southwark* [2002] IRLR 407).

### **Findings of fact**

11. The only direct evidence in relation to the alleged bribery of witnesses came from the claimant and from Mr Brennan. The two men who were alleged to have been approached by the claimant did not give evidence. They were agency carpenters called Leon and George.
12. The claimant gave evidence that he did not make any approaches to any potential witnesses to offer them money. Mr Brennan's evidence was that he was approached by Leon who said that the claimant had offered him £1000 to act as a witness for him in the tribunal claim against the respondent. He said that the claimant had also approached George. Leon said that neither had accepted the offer but that he had asked the evidence to be given so that he could win his case. Mr Brennan said that he later asked George separately whether the claimant had offered money to give evidence, and George confirmed that it was the case but that he did not want to get involved.
13. At page 89 of the bundle was an email from Leon dated 11 July 2024, in response to the respondent's representatives email saying "I confirm that Oscar Bunsch offered me £1000 in exchange for giving false evidence against Woodland Commercial".
14. Mr Hay and Mr Yareman gave evidence, essentially, that the claimant was a man of integrity, who helped out with charity work and that it was preposterous to suggest that he would do what was alleged against him.
15. Mr Brennan gave evidence in a straightforward fashion. He was not, and is not employed, by the respondent, and he is approaching retirement and told me he did not need the work of the respondent. There did not see an obvious motive for him making this up.
16. I found the claimant's evidence unsatisfactory in a number of ways. He was often reluctant to answer direct questions. He sometimes responded to certain questions with strangely precise answers. He gave evidence that he was not aware that there would be witness statements in his case until the case management hearing in this case. He advanced this as if to suggest that this made it inherently unlikely that he would approach a

witness. However, I find that the claimant must have been aware, as he is an intelligent person, that a witness would be a useful thing to have in litigation.

17. I accept the evidence of Mr Hay and Mr Yerema that at least from their dealings with him they found him a man of integrity. However, it is a fact of life that very often we find ourselves surprised by people, sometimes who we may know well, acting out of character.
18. I find as a fact that Leon approached Mr Brennan and told him shortly after the claimant had left the site in 2022 that the claimant had offered him £1000 to act as a witness. This is backed up by Leon's email at page 89. I find that Mr Brennan approached George, who also told him that the claimant offered him money to give evidence.
19. As set out above, I did not receive primary evidence from Leon and George and there is nothing from them apart from the email at page 89. The email is very brief and does not even answer all of the questions posed by the representative.
20. What I find slightly surprising is that this information known to Mr Brennan essentially went nowhere. He said that he told the respondent's manager, Aaron, then it appears that nothing was done. I accept that Mr Brennan was not employed by the respondent and would not take any sort of lead in formulating its Response. However, I am unsure why Aaron did not raise this. It is rather surprising that this information only cropped up on 18 July 2024.
21. I find as a fact that the claimant made some sort of approach to Leon and George. I find that he gave them to understand that he would give them money in exchange for them giving evidence for him. I find that this made the two men sufficiently uncomfortable that they approached Mr Brennan. It is difficult for me to make findings about precisely what the claimant said to Leon and George. Nonetheless I find that he did approach them offering money in return for their evidence.
22. I conclude that seeking their evidence is conduct of the proceedings in that it was in contemplation of a tribunal claim.
23. In relation to the allegation of falsifying a DBS document, I do not have sufficient information to make any findings.
24. Having found scandalous and unreasonable conduct, I next considered whether I would have to go on to determine whether a fair trial was still possible. I have found no authority on the question of approaching witnesses offering money, but I find that this sort of situation is akin to cases of witness intimidation. In those sorts of cases, not only does the tribunal have to determine whether there has been scandalous or unreasonable conduct, but it must go on to consider whether a fair trial was still possible.
25. The difficulty I have here is I do not know what if any role Leon or George might have played in proceedings. I have been told that they approached Mr Brennan but I have not been told whether or not they would be likely to be giving evidence, and if so they felt themselves compromised in any way

by the claimant's approach. I have not been given to understand what if any impact this had on them or on the case as a whole. The respondent's submissions on this point were rather vague. It was along the lines of the "claimant's conduct means that he can't be trusted". More is needed to establish that a fair trial is not possible. There has been no evidence or cogent submission that the claimant's approach has infected the wider case.

26. I also have some concerns about why this issue took so long to surface. One of the claimant's senior managers was aware of this in 2022, but nothing was done. In fact an application to strike out on a different basis was made before this.

27. In all other circumstances whilst I find that there has been scandalous and unreasonable conduct, I am not satisfied that a fair trial is no longer possible. I do not, therefore, strike out the claim.

—

Employment Judge Heath

4 October 2024

Date

REASONS SENT TO THE PARTIES ON

21<sup>st</sup> November 2024

O.Miranda

FOR THE TRIBUNAL OFFICE